

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 9 June 2016

Public Authority: High Speed Two Limited (Hs2)
Address: One Canada Square
London
E14 5AB

Decision (including any steps ordered)

1. The complainant has requested information relating to correspondence, communications (including emails) and meetings between the Prince of Wales and Hs2 Limited. Hs2 refused to disclose the requested information under section 37(1)(aa), 40(2) and 41 FOIA.
2. The Commissioner's decision is that Hs2 has correctly applied section 37(1)(aa) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 24 October 2015 the complainant made the following request for information under the FOIA for:

"Please note that I am only interested in information which relates to the period January 1 2014 to the present day.

Please note that the reference to the Prince of Wales should also include his private office and or any official representing acting on his behalf.

Please note that the reference to Hs2 Limited should include the head of the organisation and or the chair and or members of the board collectively and individually and or the press and public relations department. It

should also include any member(s) of staff who have specific responsibility for communications with the Royal Household.

1...During the aforementioned period has the Prince of Wales exchanged correspondence and communications (including emails) with Hs2 Limited which in any way relates to the proposal known as Hs2.

2...If the answer is yes can you please provide copies of this correspondence and communications including emails.

3...During the aforementioned period has the Prince of Wales and or his Private Secretary and or a representative acting on his behalf met with Hs2 Limited to discuss any aspect of the proposal known as Hs2. If the answer is yes can you please provide full details. In the case of each meeting can you please provide a date, time and venue. In the case of each meeting can you please provide a full list of those present. In the case of each meeting can you please provide any briefing notes issued to Hs2 staff in advance of the meeting."

5. On 23 November 2015 Hs2 responded. It said that it did not consider that the information requested was environmental; it therefore dealt with the request under FOIA. It refused to provide the information requested under section 37(1)(aa), 40(2) and 41 FOIA.
6. The complainant requested an internal review on 24 November 2015. Hs2 sent the outcome of its internal review on 11 December 2015. It upheld its original position but did withdraw its application of section 41 FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2016 to complain about the way his request for information had been handled. The complainant considers that the request should have been dealt with under the Environmental Information Regulations 2004 (EIR) rather than under FOIA.
8. The Commissioner has considered whether Hs2 was correct to deal with the request under FOIA and whether or not it has correctly applied the exemptions it has cited to the withheld information.

Reasons for decision

Is the withheld information environmental?

9. Hs2 explained that it only holds organisational details relating to a meeting that would fall within the scope of the request. It does not hold any briefing notes and none were issued in advance of the meeting.
10. Upon viewing the withheld information, it relates only to the organisational details of a meeting as set out above. Hs2 argued that the requested information is not about the construction of high speed rail network, or the environmental impact of the project. Further, the information is not "on" the high speed rail network. The requested information does not make any reference to the environment nor does it reveal what was to be discussed at the meeting. It does not therefore consider that the requested information falls within the definition of environmental information as set out at regulation 2(1) of the EIR.
11. Whilst much of the work undertaken by Hs2 will have a direct impact upon the environment, the Commissioner does not consider that the organisational detail of a meeting would have an effect upon any of the elements or factors set out in regulation 2(1) EIR. The Commissioner is therefore satisfied that Hs2 was correct to respond to this request under FOIA.

Section 37(1)(aa)

12. Section 37(1) states that information is exempt information if it relates to –

(aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne.
13. Hs2 explained that the first limb of this exemption is that the communications in question be with, or on behalf of, either the heir to the Throne, or the person for the time being second in line of succession to, the Throne. It said that in this case the Prince of Wales is the heir to the Throne and therefore it said that this limb of the exemption is satisfied.
14. It went on that the second limb of the exemption covers not only 'communications', which is not defined in the FOIA, but also information that 'relates to' a communication. In *Brown v Information Commissioner and the Attorney General* EA/2011/0002, the Tribunal adopted a broad approach to 'relates to' when they agreed that

information contained in two documents concerning the manner in which Royal wills are sealed, fell within the scope of the exemption under section 37(1). This broad approach is consistent with ICO guidance which states that the type of information caught by section 37 may include “[r]ecords or agendas of audiences (private meetings) with a member of the Royal Family”. Accordingly, the broad interpretation set out in *Brown*, and the examples included in ICO guidance, suggests that information relating to meetings with Royal Family members would be included in the definition of communications. Accordingly, Hs2 said that the withheld information in this case is to be rightly considered a ‘communication’ for the purposes of section 37(1)(aa) of the FOIA.

15. The Commissioner acknowledges that communications with the heir to the Throne are not necessarily made directly by, or to the Prince of Wales. The exemption will also include communications made or received on his behalf by his officials. Furthermore the communication need not be a written one; the exemption would apply equally to discussions with the heir to the Throne, in person or via telecommunications. The Commissioner considers that information relating to a meeting with the Prince of Wales would therefore fall within the scope of this exemption.
16. Hs2 said that as this is a class-based exemption there is no requirement to show any kind of ‘harm’ or ‘prejudice’ as a result of disclosure. Similarly, it said that as this is an absolute exemption there is no public interest test.
17. Having viewed the withheld information, the Commissioner is satisfied that it relates to communications with the heir to the Throne, the Prince of Wales, and the exemption at section 37(1)(aa) has been correctly engaged in relation to this information. There is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. As section 37(1)(aa) is an absolute exemption there is no need to consider the public interest test.

Right of appeal

18. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF